

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2737 of 1996

WITH

SPECIAL CIVIL APPLICATION NO. 7466 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

HIMMATLAL K VASA

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR HK RATHOD for Petitioner
MR HS MUNSHAW for Respondent

SPECIAL CIVIL APPLICATION NO. 7466 OF 1996

MR H.S.MUNSHA FOR THE PETITIONER
MR H.K.RATHOD FOR THE RESPONDENT

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CORAM : MR.JUSTICE J.N.BHATT,J

Date of decision: 08/10/96

ORAL JUDGEMENT

Since both the petitioners arise out of a common award between the same parties, they are being disposed of by this common judgment upon a joint request made by the learned counsel for the parties.

The petitioner workman in Special Civil Application No.. 2727 of 1996 was working as a conductor since last 22 years in the S.T. Corporation which is respondent in the said petition. The other petition is filed by the respondent wherein the present petitioner is the respondent. However, the parties are hereinafter referred to as employee and employer, for the sake of convenience.

The employee remained on leave for some time on the ground of his ill health. However, he did not resume duty despite show cause notice and reminders sent to him by the respondent-Corporation. Since the employee remained absent without intimation and without prior permission, for a long period, the departmental actions were taken against him. After observing necessary procedure, the employee came to be dismissed from service on account of the said misconduct on 4.11.1988 which was challenged by the employee by filing first appeal which also came to be rejected.

The employee questioned the order of dismissal from service recorded by the employer before the Labour court at Rajkot by Reference No. 1401 of 1989. After considering the facts and circumstances, the Labour court quashed the order of dismissal and ordered reinstatement with continuity of service without any back wages by order dated 28.9.1995. Therefore, being aggrieved by the refusal of back wages, the employee has filed Special Civil Application No. 2737 of 1996 whereas, the employer has filed Special Civil Application No. 7466 of 1996 challenging reinstatement.

After having examined the facts and circumstances emerging from the record of the present case and considering the limited jurisdictional sweep in a writ petition under Article 226 of the Constitution of India, this court is not inclined to interfere with the order passed by the Labour court which is challenged by the employee as well as the employer. Be it noted that reinstatement is ordered by the Labour court considering the fact that the misconduct was of not remaining present for a long period without intimation and prior approval

of the competent authority. However, the Labour court has refused to award any back wages mainly on the ground that there were special facts and circumstances and they were about 28 defaults and departmental wrongs committed by the employee during the course of his service of 22 years. Therefore, the Labour court while granting reinstatement with continuity of service desisted from awarding arrears of back wages. The discretionary power exercised by the Labour court in granting reinstatement with continuity of service and without back wages cannot be said to be unjust, perverse or illegal requiring interference of this court in extra-ordinary, equitable and prerogative writ jurisdiction under Articles 226 and 227 of the Constitution of India. Therefore, this court is satisfied that the entire impugned award of the Labour court is justified warranting no interference. With the result, both the petitions are dismissed, leaving the parties to bear their own costs. Rule discharged.
